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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/760,018	01/20/2004	Chuck Olson		8504

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Delphine M. James, Attorney-at-Law  
2656 South Loop West, Ste. 170  
Houston, TX 77054

EXAMINER
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BROWN, MICHAEL A

ART UNIT	PAPER NUMBER
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3772

MAIL DATE	DELIVERY MODE
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02/03/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/760,018

**Applicant(s)**

OLSON, CHUCK

**Examiner**

MICHAEL BROWN

**Art Unit**

3772

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 17 November 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SE/US)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Claim Rejections - 35 USC § 112***

Claims 1-21 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. It isn't clear how the thumb support member is integrally connected to the first end of the handle in a substantially "parallel" relationship.

Claims 1-21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claims 1-21, it isn't clear how the thumb support member is integrally connected to the first end of the handle in a substantially "parallel" relationship.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-6, 10, 12-17 as understood are rejected under 35 U.S.C. 102(b) as being anticipated by Sevier '555.

Sevier '555 discloses in figures 11 and 17 a hand-held ergonomic reflexology device comprising a handle 44, defined by an inner edge (the inner edge is on the same side as reference numbers 42-43, in fig. 11), a lower edge (fig. 11), a first end (on the same end as reference number 66, in fig. 11), an opposite end (at 58), a thumb support 48, being integrally connected to the first end of the in a substantially parallel relationship to the longitudinal axis of the handle (fig. 11) and protruding outwardly laterally along the inner edge near a distal end of the first end therefrom to a sensor tip (at 64), having a semi-spherical shape 66, on its apex point, the sensor tip portion is adapted to apply direct pressure to predetermined treatment areas of the body, the thumb support being dimensioned to support the circumference of the user's thumb (fig. 17), the handle is cylindrical (fig. 11), the handle and the thumb support being dimensioned to fit inside the user's hand,, wherein while in use the thumb rests in a natural position parallel to the plane of the palm, the thumb support member has substantially a partially enclosed elliptical shape (fig. 11, the lower portion of 48 provides a substantially a partially enclosed elliptical shape), defined by an upper surface area (fig. 11), inner curved peripheral edge (fig. 11), an outer curved peripheral edge (fig. 11), the upper surface area having a circumference (fig. 11), dimension to accommodate the thumb, the outer curved peripheral edge extending from the tip portion proximally near the upper edge of the outer edge of the handle and the inner edge curved peripheral edge extending from the tip portion to an arc (fig. 11), therein to resemble a small hand gun, the thumb support further comprises a groove 66, a means (the tip 64), for transmitting proprioceptive sensitivity from the sensor tip, the thumb support member and the handle are dimensioned to fit a (small, medium or large hand fig. 11), the opposite end of the handle has a blunt tip 58, an outer peripheral edge extending from the tip portion through the outer peripheral

curved edge of the thumb support (fig. 11), the outer peripheral edge is structured with sufficient depth to apply pressure, an inner peripheral edge extending from the tip portion through the inner peripheral curved edge of the thumb support, the inner peripheral edge of the thumb support member is structured with sufficient depth to apply pressure and the thumb support member can accommodate either hand (left or right).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 7-9, 11 and 18-21 as understood are and rejected under 35 U.S.C. 103(a) as being unpatentable over Sevier '555 in view of Beaty '781.

Sevier '555 discloses in figures 11 and 17 a hand-held ergonomic reflexology device, substantially as claimed. However, Sevier doesn't disclose the handle and the support being a smooth rigid material that includes wood or plastic. Beaty teaches in figures 1-2 a reflexology device that has a handle 12, and a thumb support member 16 that are made of a smooth rigid material (wood or plastic, section 0018, lines 11-13). It would have been obvious to one having ordinary skill in the art at the time that the invention was made that the device disclosed by Sevier could be fabricated of a smooth rigid material as taught by Beaty. The smooth rigid material as taught by Beaty could be used to massage different portions of the body. Sevier, also discloses that the thumb support and the handle are rigid. Thus, it is simply a choice of material

to form the device of plastic or wood. The method steps recited in claims 18-21, are within the scope of the massaging procedures disclosed by Sevier.

***Response to Arguments***

Applicant's arguments filed November 17, 2007 have been fully considered but they are not persuasive. Applicant argues that the thumb support is integrally connected to the first end of the handle in a parallel relationship. However, there is no support for the thumb support being integrally connected to the handle in a parallel relationship to the longitudinal axis of the handle. If the thumb support is extended towards the longitudinal axis of the handle there would be a connection between the thumb support and the longitudinal axis of the handle. Thus, there isn't a parallel relationship but a perpendicular relationship between the thumb support the longitudinal axis of the handle. Applicant argues that the thumb support in Seiver is used to perform a different function than the thumb support in the present invention. However, the thumb support disclose by Seiver is capable of being used to provide a massaging effect while the thumb rests thereon. Applicant argues that the device disclosed by Seiver doesn't provide reflexology. However, it is capable of providing reflexology. Applicant argues that Seiver doesn't disclose a protrusion. However, Seiver discloses a protrusion that is capable of providing reflexology.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO

MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MICHAEL BROWN whose telephone number is (571)272-4972. The examiner can normally be reached on 5:30 am-4:00 pm Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Bianco can be reached on 571-272-4940. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Michael Brown/

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Primary Examiner, Art Unit 3772